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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 78.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, ITS OFFICERS AND MEMBERS,

Petitioners,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR RESPONDENT.

QUESTIONS PRESENTED.

Where a Union was ordered by the District Court to abide by and comply with an Arbitrator's Award and where the evidence disclosed that the officers of the Union precipitated a wildcat, illegal strike in violation of the Arbitrator's Award; that they castigated and ridiculed the Award and sought to re-arbitrate the Award which was final and binding, was the Union properly adjudged in civil contempt by the Court below?

Where a Union was ordered by the Court below to abide by and comply with an Arbitrator's Award was the Union properly adjudged in civil contempt for the mass action of its members who participated in a wildcat, illegal strike in violation of the Arbitrator's Award and the Order of the Court below?

STATUTE INVOLVED.

The Labor Management Relations Act, Section 301(a), 61 Stat. 156, 29 U. S. C. A. 185, which provides as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

This is an appeal from an order of the District Court adjudging the petitioner in civil contempt for violating an order of the Court which required the petitioner to abide by and comply with an Arbitrator's Award. Petitioner was fined $100,000.00 per day prospectively for each day commencing with the day of the hearing, that it failed to comply with the Court's order. However, the exact amount of the fine due has not been determined since that decision is still pending in the District Court.

The record relating to the Order of the District Court which was violated is presently on appeal before this Court in Case No. 34. Briefly, this record shows that in February, 1965, the parties hereto, the Philadelphia Marine Trade Association (PMTA) and International Longshoremen's Association, Local 1291 (Union), entered into a new Collective Bargaining Agreement which extended until September 30, 1968. On April 26, 1965, a dispute arose as to the interpretation of a particular section of the contract. The parties submitted this issue of contract interpretation to an Impartial Arbitrator who ruled in

favor of the PMTA in an Award dated June 11, 1965. Under this Award the PMTA had the right to set back gangs of longshoremen from an 8:00 A. M. start to a 1:00 P. M. start "without qualification" subject to the payment of five hours of guaranteed pay, one hour for the morning period and four hours for the afternoon period (No. 34, R. 6-9; 19-26; 30-31).

On July 30, 1965 the Union refused to comply with the Arbitrator's Award and on August 2, 1965 a complaint was filed by the PMTA in the District Court under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, for specific enforcement of the Arbitrator's Award. A hearing was held on August 3, 1965. This hearing was continued without an order being entered because of repeated assurances by counsel for petitioner that the Union was bound by the Arbitrator's Award and intended to comply with it in the future. However, about six weeks later on September 13, 1965, despite the assurances given to the District Court, the Union refused to comply with the Arbitrator's Award for the second time. After a hearing on September 15, 1965 the Trial Court entered an order enforcing the Award of the Impartial Arbitrator (No. 34, R. 3-6; 35; 38; 40; 43-44; 59-60; 83: 113).[1]

On February 25, 1966, an identical dispute arose over the setback clause and the Arbitrator's Award. Eight gangs of longshoremen were employed for two vessels which were docked at Pier 98, South Wharves, Philadelphia (R. 20). These gangs were set back at 7:30 A. M. from an 8:00 A. M. start to a 1:00 P. M. start (R. 18). Some of the men complained to a Union Business Agent, Smith, relative to the set back. This Union official, instead of informing the men that they were properly set back under

1. The order was clear and precise. It referred to the award which was the subject of the hearing and which had been the subject of extensive arbitration hearings between the parties. It required that the award be "specifically enforced" by petitioner and it also required petitioner to "comply with and to abide by the said Award" (No. 34, R. 113).

the contract and in accordance with the Arbitrator's Award, told them that they had a "good beef" (R. 74).[2]

As a result, at 1:00 P. M. that day the gangs involved refused to work in accordance with the contract (R. 20-22). The following day, Saturday, February 26, 1966, these gangs also refused to work. They knocked off nine gangs of longshoremen working on two other vessels at Pier 98 South Wharves and also went along the entire waterfront knocking off all the other vessels which were working in the Port. This activity on Saturday morning involved forty-eight gangs or one thousand fifty-six longshoremen and fourteen vessels (R. 22-23; 47).

In view of the above work stoppages, a meeting was arranged between representatives of PMTA and the Union on February 26, 1966, in the offices of the PMTA. This meeting was attended by the President, Vice-President and Executive Secretary of the PMTA and the President, two International Vice-Presidents, four Business Agents and the two Financial Secretaries of the Union (R. 24). At this meeting the Union officials admitted that the Arbitrator's Award was binding on them and that it covered the existing dispute (R. 26). They stated they intended to "live by it" and that they would go down to the Hiring Center the following morning to get their men "to go back to work in accordance with our contract" (R. 49). Following this meeting the PMTA sent the Union a telegram confirming the agreement reached at that meeting (R. 26, 50).[3]

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2. This was a repetition of the Union's antagonistic tactics towards the award which were brought out at the hearings on August 3 and September 15, 1965 where it was uncontradicted that the Union did not agree with the Award and did not intend to abide by it (No. 34, R. 65).

3. It is significant that the Union did not raise any question that the gangs were not properly notified regarding the set-back (R. 26; 49-50). Section 10(6) did not require notice to each longshoreman by 7:30 A. M. The established practice was to notify the Joint Dispatching Office by that time (No. 34, R. 56-57; 119).

At the conclusion of the above meeting the PMTA assumed that the illegal work stoppage would be terminated the following day and that the longshoremen would return to work in accordance with their contract. On Sunday, February 27, 1966, nine vessels and thirty-one gangs of longshoremen were scheduled to work (R. 26). But no work was performed that day, and the evidence shows that the Union officials made only a token effort to get the men to return to work. Then, on Monday, February 28, 1966, the Union sent two telegrams to the PMTA. The first telegram denied the statements contained in the PMTA's telegram regarding the meeting on February 26th, and castigated the Arbitrator's Award as an "infamous award" which the Union did not intend to "perpetuate" (R. 29). The second telegram demanded that the Employer's rights under the Arbitrator's Award be re-arbitrated in spite of the fact that the Arbitrator's Award was final and binding (R. 30).

On Monday, February 28th, twenty-two vessels and sixty gangs of longshoremen were involved in this illegal work stoppage which shut down the entire Port of Philadelphia (R. 26). The Trial Court was notified of this crisis on the waterfront and a hearing was set for 2:00 P. M., that day. This hearing was attended by counsel for the Union. At the hearing, counsel for PMTA outlined in great detail, covering nine transcribed pages (R. 3-9), the background of what had happened and requested the Court to set a further hearing for the purpose of citing the Union for contempt of court and fining the Union for violating the Court's Order (R. 8-9). A rule to show cause was prepared and executed by the Court and a copy was served on counsel for the Union (R. 11-12). This rule clearly showed that the hearing on March 1, 1966 was for the purpose of determining whether the Union should be ". . . held in contempt for violating the order of this court issued the fifteenth day of September, 1965 . . ." (R. 13).

On March 1, 1966, the hearing was held before Judge Body. At this hearing the testimony clearly established that the Union had violated the Court's Order. John J. Smith, a Business Agent of the Union, admitted that on Friday morning, February 25th, when the gangs of longshoremen told him they were set back he told them that they had a "good beef" (R. 14). However, at 1 o'clock that afternoon when the men reported for work and refused to work, he was not at the Hiring Center. He allegedly had a "domestic problem" (R. 78). The following day, Saturday, February 26th, he didn't arrive at the Hiring Center until some time between 8:00 and 8:45 A. M., although his regular arrival time was 7:00 A. M., because he was "out celebrating the night before" (R. 79). Later on Saturday morning as he rode up Delaware Avenue he saw men knocking off ships "all along the piers" (R. 80).[4]

Richard L. Askew, the President of the Union, testified that at the meeting with the PMTA on Saturday, February 26th, he told the representatives of the PMTA that "the knocking off of the vessels on Saturday morning was unauthorized" and that he "did not condone the action of the men in knocking off the vessels" (R. 97). He also agreed to go to the Hiring Center on Sunday, February 27th, to urge the men to return to work and he further agreed that the Union was going to abide by Judge Body's decision enforcing the Arbitrator's Award (R. 98). He was then confronted with the language in the Union's telegram (Exhibit P-3, R. 29), which was forwarded to the PMTA on Monday morning (February 28th) and which referred to the Arbitrator's Award as an "infamous award" which the Union did not intend to "perpetuate". He was asked whether this language in the telegram conveyed to the PMTA the Union's alleged intention to be

4. Smith's subsequent activities which clearly show that he did nothing to terminate the problem which he created are referred to at page 14 *infra*.

bound by the Arbitrator's Award (R. 100-101). His evasiveness in attempting to avoid answering this question is recorded at R. 101-102. He finally answered: "Where does the award fit into this picture?" (R. 102).[5] His further evasiveness with the succeeding question which was whether he intended to be bound by the award is recorded at R. 103-104.

In addition, Askew did not address the men at the Hiring Center on Sunday morning, February 27th, as he promised to do at the meeting with the PMTA on February 26th (R. 106). He also admitted that he did not address the men at the Hiring Center on the following days, February 28th and March 1st. In spite of the large number of men who were congregating at the Hiring Center on February 28th, he claimed that he "didn't notice" them (R. 107). He admitted that he has used the microphone and public address system at the Hiring Center in the past to convey messages to the men but with respect to this case he said:

> "I didn't use the microphone any day at all to address the men about returning to work or anything about this dispute" (R. 107).[6]

On Tuesday, March 1st, when Askew arrived at the Hiring Center there was "a large crowd there. There were so many, I couldn't tell how many" (R. 109). Nevertheless, he didn't use the microphone and only talked to about twenty-five to thirty men inside the dispatching office (R. 109). He admitted that some of his members requested a Union meeting so that "they could vote as to whether or not they wanted to return to work." But he refused this

5. This is the same witness who according to the uncontradicted testimony at the previous hearing before Judge Body said that he would not comply with the award and would not be bound by the award (No. 34, R. 65).

6. Actually, he precipitated the incident which occurred on September 13, 1965, by using the same microphone to countermand the employer's orders in violation of the Arbitrator's Award (No. 34, R. 91-97).

request (R. 110-111). He advised these members that the "work stoppage is illegal; it is in violation of the law, in my judgment" (R. 111). When he was asked ". . . why were you asking for a grievance or arbitration of this dispute, if the dispute at the present time is illegal and in violation of the law?" He replied:

> "That's a hard question to answer, I will tell you the truth" (R. 111-112).

He admitted that the Arbitrator ruled that the Employers have the right "to set back without qualification" and that "this ruling was made as an interpretation of the contract between the parties" (R. 115). He was then questioned as follows (R. 116):

> "Q. —Didn't you agree at the meeting on Saturday at noontime that you would do everything you could to get the men to go back to work?
>
> A. We agreed, we stated that we were going to do all that we could to try to get the men to go to work and we did that.
>
> Q. Well, do you think sending a telegram on Monday, and asking for a grievance and arbitration and calling the award an infamous award is getting the men to go back to work?
>
> A. Oh, I think the award is ridiculous."

After the above testimony was concluded the Court Below entered its oral order adjudging the Union in civil contempt for violating its order of September 15, 1965, and holding the Union responsible for the mass action of its members (R. 150-151).

ARGUMENT.

I. A Reversal of the Basic Action for Specific Performance of the Arbitrator's Award Would Not Require a Reversal of the Contempt Order Involved in This Appeal.

Petitioner argues that a reversal of the basic action for specific performance of the Arbitrator's Award in Appeal No. 34 would necessarily require a dismissal of the Contempt order involved herein. Petitioner cites as its sole authority an excerpt from *United States v. United Mine Workers of America*, 330 U. S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947). However, that excerpt applies only to civil contempts which are based upon compensatory relief, whereas the fine in this case was solely coercive in nature. As this Court pointed out further on in that decision:

> "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained" (id. at 303).

And as this Court stated immediately prior to the excerpt quoted in petitioner's brief:

> "It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action *may profit* by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order" (emphasis supplied) (id. at 295).

In a most recent case, *Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook Railroad Company, et al.*, 55 L. C. 11, 914, decided May 12, 1967 by

the U. S. Court of Appeals for the District of Columbia the same argument was made as made herein by petitioner. There the Court said:

> "The *Mine Workers* case dealt with, and has become a basic directive in regard to, the right of defendants in criminal and compensatory civil contempt proceedings to attack the validity of the underlying orders on which the alleged contempts are based. That case did not, however, specifically deal with a coercive civil contempt order in this regard.
>
> It would appear to be fallacious to hold that the efficacy of coercive civil fines is to be governed by the compensatory fine rationale of *Mine Workers*, which allows alleged contemnors to challenge the propriety of the underlying order in defense of their otherwise contemptuous disobedience of that order. Certainly, a prospective, coercive fine, . . . will serve to preserve the court's 'power to order maintenance of a status quo,' only to the degree that litigants are prevented from pre-judging the validity of that court's orders. Rather, as is true of punitive fines under *Mine Workers*, it would seem that prospective, coercive fines should be enforceable despite a subsequent determination by the District Court, or on appeal, that the disregarded order was in fact beyond the ordering court's jurisdiction." (id. at 19,027)

But in this case respondent has not asked for and has not received any compensatory relief. The fine was levied solely to coerce petitioner into compliance with the District Court's order. The contempt order clearly provides that the fine was to be paid "to the clerk of the United States District Court" (R. 151). Therefore, petitioner's argument must necessarily fall.

II. A New Complaint Was Not Required to Commence the Contempt Action. This Proceeding Was Properly Instituted by a Rule to Show Cause Why Petitioner Should Not Be Held in Contempt for Violating the District Court's Order, and the Federal Rules of Civil Procedure Were Complied With.

Petitioner contends that a separate complaint should have been filed to commence the contempt action; that petitioner was required to enter the contempt hearing "without knowledge of the claim or charge", and "without affording petitioner any opportunity whatsoever for preparation".

The facts are that the contempt hearings on February 28 and March 1, 1966 were a continuation of an equitable action which was started on August 2, 1965 by a complaint against the petitioner seeking specific enforcement of the Arbitrator's Award which is involved in this matter. The hearings which were held in connection with that complaint resulted in the Court's order of September 15, 1965 which enforced the Arbitrator's Award and ordered petitioner "to comply with and to abide by the said Award". All of the pleadings and the testimony taken at the various hearings are a matter of record and are presently on file in this Court in connection with Appeal No. 34. Furthermore, at the hearing on February 28, 1966, counsel for respondent made a detailed statement consisting of nine transcribed pages (R. 3-9), outlining the nature of respondent's charge against petitioner and the specific relief requested. Petitioner was represented at the hearing by its counsel. Counsel for respondent stated:

> "I would ask your Honor to set a hearing at which time we would like to have the union cited for contempt of your Honor's order and have the union fined an amount which would be appropriate under the circumstances." (R. 9)

In addition, at the conclusion of the hearing on February 28, 1966, an order containing a rule to show cause was signed by the Court which clearly gave petitioner written notice that the hearing on March 1st was for the purpose of determining whether the petitioner should "be held in contempt of Court for violating the order of this Court issued the fifteenth day of September, 1965, . . ." (R. 13).

It is therefore submitted that the statement of counsel at the hearing on February 28th and the order granting the rule to show cause gave petitioner all of the notice which was required under the extreme emergency which existed in this case, which was a wildcat, illegal strike which tied up the entire Port of Philadelphia.

Petitioner relies solely on *Philippe v. Window Glass Cutters,* 99 F. Supp. 369 (W. D. Ark. 1951), in connection with this point. However, that case does not support petitioner's position since it cites with approval Section 1439 of Barron and Holtzoff, Federal Practice and Procedure, Volume 3. Reference to that Section will disclose that the learned authors stated at page 508 that:

> "Where parties are already subject to the jurisdiction of the Court no new process is required to bring them in to answer contempt charges . . ."

Furthermore, all of the requirements set forth in *Philippe v. Window Glass Cutters (supra)* were met in this case. There was notice and a hearing. There was also "a short and plain statement" of (a) the Court's jurisdiction, (b) "the claim showing that the pleader is entitled to relief" and (c) "a demand for judgment".

Petitioner's further contention that the hearings below constituted a "trap" and that the Court's specific enforcement order was not clear and, therefore, they "could not determine what acts they were allegedly prohibited from performing" stretches credibility to the breaking point. All petitioner had to do was to impress upon their members

that they were bound by the Arbitrator's Award and the order of the District Court. Instead, they took the position that they were not bound by the award; they told their members that they had a "good beef" when the members objected to the award; they sent telegrams calling the award "infamous" and stated that they were not going to "perpetuate" it; and in spite of the finality of the award they insisted that the award be re-arbitrated.

III. The Union Was Properly Held Responsible on Clear and Convincing Evidence for the Mass Action of Its Members in Violating the Court's Order Enforcing the Arbitrator's Award.

Petitioner admits that the law imposes a responsibility upon a Union for the mass action of its members which violate a Court order against it. However, petitioner contends that it should be excused in this case because it "exerted every reasonable effort to prevent and terminate the work stoppage."

This contention crumbles under the overwhelming evidence to the contrary as set forth in the record in this case. This testimony shows that on February 25, 1966 a Union official, Smith, actually precipitated the work stoppage by telling the men who were properly set back under the Arbitrator's Award that they had a "good beef" in protesting the set back.

The following day, February 26th, the entire Port of Philadelphia was shut down because of this "set back" dispute. The Union then acknowledged that the strike was unauthorized and illegal. The Union officials promised to go to the Hiring Center on February 27th and urge the men to return to work. However, on that day they made only a token effort and on February 28th, they openly and publicly expressed their defiance of and their refusal to comply with the Court's Order and the Arbitrator's Award by sending telegrams (Exhibits P-2 and P-3; R. 29-30), which castigated the Arbitrator's Award as an "infamous

award", which they did not intend to "perpetuate" and demanded re-arbitration of a dispute which had been settled by a final and binding Arbitrator's Award. These telegrams alone without any other testimony were sufficient to substantiate the Union's violation of the District Court's order which required the Union to abide by and comply with the Arbitrator's Award and showed an entire lack of good faith compliance on petitioner's part.

However, the other testimony also demonstrated unequivocally that the Union did not exert every reasonable effort to terminate the work stoppage prior to the hearing on March 1, 1966. The testimony shows that Smith, who triggered the work stoppage, wasn't around on Friday afternoon (February 25, 1966) or Saturday morning (February 26, 1966) at the Hiring Center at the appointed starting times to lend his best efforts to terminate it. In the morning on February 28th he only talked to small groups of men at the Hiring Center out of a congregation of six hundred to seven hundred men and he made no effort to address these men over the public address system which admittedly was available. He also didn't make any effort to go to Pier 98 on February 28th and address the men whom he had told on February 25th that they had a "good beef". Pier 98 was only a half mile away from the Hiring Center and Smith had his car there but he made no effort to correct the situation by talking to these men and urging them to return to work (R. 82-84).

Askew's testimony, as President of the defendant Union, shows in greater detail the Union's violation of the Order of the Court Below and its total lack of good faith efforts to comply with it. His evasiveness in attempting to avoid answering pertinent questions relating to his willingness to abide by the Arbitrator's Award is reflected in the record (R. 101-104). He testified in open court before the Court's contempt order was rendered that: "I think the award is ridiculous" (R. 116). He didn't make any effort to address the men at the Hiring Center on Feb-

ruary 27th, as he promised at the meeting on February 26th and he did not address the men at the Hiring Center on February 28th or March 1, 1966. And he made no effort to use the microphone to communicate with the men as he admittedly had done in the past.[7] He also refused a Union meting which was suggested by his own members as a method of ending the strike (R. 110-111).[8]

Moock, the fourth International Vice-President of the defendant Union, made no constructive efforts to terminate the strike. He appeared at the Hiring Center on February 27th for only a few minutes and didn't address the men at all. He was also at the Hiring Center on March 1st, the day of the hearing before the District Court. This was the day that the largest number of men was at the Hiring Center during the whole strike (R. 136). Yet, Moock stayed there "only a few minutes" and didn't use the microphone to advise the men that their work stoppage was unauthorized and that they should return to work (R. 137).

After all the testimony was presented and the arguments of counsel were concluded, Judge Body declared a short recess in order to consider the evidence (R. 150).

When he returned he announced his decision holding petitioner in civil contempt. It is obvious from reading his decision that the learned Trial Judge was not impressed with or persuaded by petitioner's testimony regarding its alleged efforts to terminate the work stoppage, since he said: "So in my opinion the Union in effect approved what was done and must be held responsible" (R. 150). And the Circuit Court of Appeals after reviewing the testimony in this case said:

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7. Indeed, this is the same witness who took it upon himself to use the microphone at the Hiring Center on September 13, 1965, to countermand employment orders issued in accordance with the Arbitrator's Award. His action at that time resulted in the Court's Order of September 15, 1965 enforcing the Arbitrator's Award.

8. It is also significant to note that after the Court's Order was entered on March 1st, a Union meeting was held on March 2nd and the men returned to work on March 3rd.

"The record made before the Trial Court fully justifies the Court's finding that the mass action of the members of the union was, in fact, the action of the union." (R. 158).

Petitioner states that: "At the trial, the respondent admitted that the union did not cause the wildcat strike, but did everything possible to avoid it and terminate it after it started." (Brief, p. 14). This statement is blatantly erroneous as no such admission appears in the record in this case.

It must be remembered that on Saturday morning February 26, 1966, respondent had no knowledge that the work stoppage which started the preceding day was caused by Smith's advice to the men that they had a "good beef". After the meeting between the parties on Saturday afternoon, respondent assumed that petitioners were sincere in their statements that the work stoppage was illegal and unauthorized and that they would so advise their members and terminate it the next day. However, this assumption was shattered on Monday, February 28, 1966, when petitioners repudiated the agreement reached on Saturday, castigated the award and demanded re-arbitration.

There is testimony by one of respondent's witnesses who admitted that Askew sounded "sincere" early Saturday morning when he asked some men to return to work. (R. 53). This was long before the Union's true intentions were known. And respondent's counsel made no such statement as the record clearly discloses.[9]

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9. Counsel for respondent stated:

"Mr. Scanlan: If your Honor please, I just want to say that it is quite obvious what has happened. We thought that the Union was going to do everything that it could to get the men to go back to work until they sent these telegrams on Monday and asked for this matter to be re-arbitrated and castigated the award of Mr. Weiss as an infamous award and said they were not going to perpetrate it and then the witnesses have admitted on the stand that while they went down and told the men to go back to work, they didn't tell the men that the work stoppage

Under the law and the evidence there can be no doubt that petitioner was responsible for the work stoppages involved in this case since they stemmed from a refusal to comply with the Court's Order of September 15, 1965 enforcing the Arbitrator's Award. Petitioner's antagonism to that award is well documented in this case and in case No. 34. If voluntary arbitration is to be encouraged and protected the petitioner cannot be permitted to escape its responsibilities to comply with a valid and lawful order of a Federal Court. As stated in one of the cases ctied by petitioner:[10]

"So that the rule of law which I have announced is the only rule which will preserve the unions, because if the plan is adopted throughout the country of trying to

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was unauthorized, and I don't know how we can get these men to go back unless they realize that their work stoppage is unauthorized.

It is one thing for the Union to say that the work stoppage is unauthorized and illegal in Mr. Corry's office, but the men who have to hear this are the men down on the waterfront, and the people who have to tell them this are the officials of the Union, and this is something that they have failed to do, and in failing to do that, they have shown that they do not intend to abide by the arbitrator's award which was the essence of the order which Your Honor issued here. The order of Your Honor specifically enforced the arbitrator's award and decreed that the Union should comply with and abide by this award.

Now, Mr. Askew has testified on the witness stand that he considers it to be a ridiculous award, and it is quite obvious that if somebody considers the award to be ridiculous, they do not intend to comply with and to abide by it, and I think——

The Court: I understand your position." (R. 148-149)

10. *United States v. United Mine Workers*, 77 F. Supp. 563 (D. C. 1948). The law is eminently clear that so long as a union is functioning as a union it must be held responsible for the mass action of its members since experience shows that men don't act collectively without leadership. See *U. S. v. United Mine Workers, (supra)*; aff'd. 177 F. 2d 29; cert. denied 338 U. S. 871; 94 L. ed. 535; *Portland Web Pressmen's Union v. Oregonian Pub. Co.*, 188 F. Supp. 859 (D. Ore. 1960); *United Textile Workers v. Newberry Mills, Inc.*, 238 F. Supp. 366 (W. D. S. C. 1965); and *U. S. v. Brotherhood of Railroad Trainmen*, 96 F. Supp. 428 (N. D. Ill. 1951).

use a wink, a nod, a code, instead of the word 'strike', and if that sort of a maneuver is recognized as valid by the Courts, then you will have among the unions lawlessness, chaos, and ultimate anarchy. . . ." (id. at 567).

IV. There Is No Constitutional or Statutory Right to a Jury Trial for Civil Contempt Arising Out of a Violation of the Court's Order Under Section 301 of the Labor Management Relations Act Enforcing the Arbitrator's Award.

Petitioner finally contends that it was entitled to a jury trial under the Constitution and under Section 3692 of Title 18, U. S. C. A. "regardless of whether the contempt be criminal or civil."

That this case involves a civil contempt proceeding rather than a criminal contempt proceeding cannot be seriously disputed. It meets all the criteria for civil contempt as enunciated by this Court in its most recent decisions.[11]

(a) The "character and purpose" of the contempt order was remedial—to coerce the Union into compliance with the Court's previously issued order;

(b) The "act of disobedience" consisted solely "in refusing to do what had been ordered", i.e., to comply with the Court's order enforcing the Arbitrator's Award—not "in doing what had been prohibited."

(c) The Trial Judge was "primarily seeking to accomplish" compliance with his order rather than

11. *Shillitani v. United States,* 384 U. S. 364, 86 S. Ct. 1531, 16 L. ed. 2d 622 (1966); *Cheff v. Schnackenberg,* 384 U. S. 373, 86 S. Ct. 1523, 16 L. ed. 2d 629 (1966). See also; *Compers v. Bucks Stove and Range Company,* 221 U. S. 418, 31 S. Ct. 492, 55 L. ed. 797 (1911); *United States v. United Mine Workers,* 330 U. S. 258, 67 S. Ct. 677, 91 L. ed. 884 (1947); *Penfield Co. v. Securities & Exchange Commission,* 330 U. S. 585, 67 S. Ct. 918, 91 L. ed. 1117 (1947).

punishment for past violations, which began as of February 25, 1966.

(d) The fine was "conditional and prospective". It was to be paid "within twenty-four hours" from the time the hearing started and for "every day thereafter as long as the order of this Court is violated". In addition, the Court set a further hearing for Monday March 7th (six days later)—obviously for the purpose of determining whether the contempt order had been complied with and to give the Union an opportunity "to purge itself."

(e) The Union carried "the keys—in its own pockets." It could have stopped the running of the fine up until 2:00 P. M. on March 2nd by ordering its members to return to work and to comply with the Arbitrator's Award and the Court's order.

(f) The Trial Judge definitely "viewed the matter as civil contempt", since he specifically referred to the action as "civil contempt" on two occasions in his order. (R. 150-151)

(g) The Trial Judge also complied with the guidelines established by this Court in footnote 9 of *Shillitani* (*supra*) which require the Court Below to resort to "criminal sanctions only after he determines, for good reason, that the civil remedy would be inappropriate," by stating that:

> "I hold the Union, the officers and the men who participated responsible in contempt of court *and at this time* civil contempt only." (Emphasis supplied.) (R. 151)

(h) The proceeding was between the original parties (PMTA and the Union) and was instituted by respondent and tried as part of the main equity action.

(i) The relief requested was primarily for the benefit of respondent.

In any event, the fine cannot be classified as "unconditional" or "retrospective" since the amount of the fine and the method of its enforcement has not been decided. This matter is still pending before Judge Body. On March 25, 1966, a motion was filed by respondent for a hearing "to fix amount of fine and to enforce judgment of civil contempt". An order was entered that day setting a hearing for April 13, 1966 (R. 153, 156). Petitioners fully participated in that hearing and introduced testimony for the purpose of mitigating the amount of the fine. No mention whatsoever was made by petitioners at that hearing or at any other hearing that the proceeding was for criminal contempt.

The *Shillitani* and *Cheff* cases (*supra*) are also dispositive of the other issue raised by petitioners that they were constitutionally entitled to a jury trial.

In *Shillitani*, this Court said:

> "We hold that the conditional nature of these sentences renders each of the actions a civil contempt proceeding, for which indictment and jury trial are not constitutionally required." (U. S. at 365, L. ed. at 624)

In *Cheff*, this Court said:

> ". . . a jury trial is not required in civil contempt proceedings as we specifically reaffirm in Shillitani, supra." (U. S. at 377, L. ed. at 632)

The only statute which appellant cites in support of its demand for a jury trial is Section 3692 of the Act of June 25, 1948, c. 645, 62 Stat. 844, 18 U. S. C. A. 3692.[12]

12. "§ 3692. *Jury trial for contempt in labor dispute cases.* In all cases of contempt arising under the laws of the United States government the issuance of injunctions or restraining orders in any

However, as we shall point out below, Section 3692 of Title 18 applies only to criminal contempt proceedings under the Norris-LaGuardia Act. The basic action in this case was brought under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, to enforce the Arbitrator's Award and is not subject to the provisions of the Norris-LaGuardia Act. This action was for specific performance and was not for injunctive relief. Therefore, Section 3692 (*supra*) which covers the issuance of "injunctions or restraining orders," cannot apply to this action.

That Title 18 of the United States Code, of which Section 3692 is a part, applies only to "Crimes and Criminal Procedure" is evident from the title itself. In addition, the legislative history of Title 18 shows beyond any doubt that it was intended solely to revise and codify the *criminal laws* of the United States. When Title 18 was first introduced in the House of Representatives, its sponsor, Representative Keogh said:

> "With this goal in mind and as part of the preliminary work of the next edition of the Code, the Committee on Revision of the Laws, asked for and received an authorization from Congress on June 28, 1943 to prepare a revision and codification of title 18, Crimes and Criminal Procedure, and title 28, the Judicial Code and Judiciary, of the United States Code.
>
> On June 22, 1943, I told the House that we proposed to bring to it for final approval and enactment into positive law, 'a model judiciary code and criminal code, the kind of codes that this great body should present to the people of the greatest country.'
>
> The first of these two projects is now complete and is represented by a bill to revise, codify, and enact

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case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed . . ."

into absolute law title 18 of the United States Code, entitled 'Crimes and Criminal Procedure' which I have just introduced." (90 Congressional Record 8165)

During the debate on Title 18 (H. R. 3190), Representative Robison explained the "scope of the bill", as follows:

> "This bill is a restatement of the Federal laws relating to crimes and criminal procedure in effect on April 15, 1947. Most of these laws are now set forth in title 18 of the United States Code and are based upon the 1909 Criminal Code—which was the last revision of criminal laws enacted by the Congress—and subsequent laws on the subject.
>
> . . .
>
> You will find no radical changes in the philosophy of our criminal law in this bill." (93 Congressional Record 5049)

When Title 18 was introduced in the Senate, its sponsor, Senator Wiley, stated that its purpose was as follows:

> "The purpose of the bill is to codify and revise the laws relating to Federal crimes and criminal procedure.
>
> . . .
>
> As I said, it is along the line of bringing together the Federal criminal statutes into one place, so as to avoid the necessity of going from one volume to another in order to ascertain what the criminal law of the Nation is." (94 Congressional Record 8721)

The legislative history of Title 18 further demonstrates that Section 3692 is the specific transposition to Title 18 of Section 11 of the Norris-LaGuardia Act. Therefore, even if it's assumed, arguendo, that Title 18, relates to civil actions as well as criminal actions, in order for Section 3692 to apply the proceeding below would have to

be based on the provisions of the Norris-LaGuardia Act. This is not the case as we have referred to above.

That Section 3692 was intended after the codification, just as before, to refer only to contempt proceedings under the Norris-LaGuardia Act, is clear from the reviser's notes, its legislative history and Court decisions. The reviser's notes as contained in Title 18, Section 3692 are as follows: "Based on section 111 of Title 29, U. S. C. 1940 ed., Labor (March 23, 1932, c. 90, s. 11, 47 Stat. 72)." This reference is to section 11 of the Norris-LaGuardia Act.

The change in the introductory clause of Section 11 of the Norris-LaGuardia Act reading, "In all cases arising under this Act," to read in Section 3692, "In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" is also significant. By this change, Section 3692 was clearly anchored to cases arising under the Norris-LaGuardia Act, the only existing federal statute in which the jurisdictional touchstone is defined in terms of injunction proceedings in cases "involving or growing out of a labor dispute".[13] The legislative history on this subject is set forth in the footnote.[14]

Since Section 3692 relates only to contempt proceedings arising under the Norris-LaGuardia Act, it is plainly inapplicable to proceedings under the National Labor Relations Act. If Section 3692 was intended to apply to pro-

13. See Norris-LaGuardia Act, preamble, Sections 4, 7, 9, and 10 (29 U. S. C. §§ 101, 104, 107, 109, 110). "Changes in phraseology" of this nature made in the transposition of various provisions of law to Title 18 did not "change [the] meaning or substance" or extend the scope and effect of the provisions. H. Rep. No. 304, 80th Cong., 1st Sess.

14. 90 Cong. Rec. 8164-8166; 93 Cong. Rec. 5048-5049; 94 Cong. Rec. 8721-8722; H. Rep. No. 152, 79th Cong., 1st Sess.; H. Rep. No. 304, 80th Cong., 1st Sess., S. Rep. No. 1620, 80th Cong., 2d Sess. In the codification into Section 3692, Section 11 as such was specifically repealed. 62 Stat. 683, 862, 866.

ceedings under the National Labor Relations Act, it seems reasonable that this radical change in the purpose of Section 11 of the Norris-LaGuardia Act would have provoked at least passing comment by Congress. To the contrary, at no time during the more than a year which elapsed between the passage of the 1947 amendments to the National Labor Relations Act and the adoption of the revision of Title 18 was it even intimated that Section 3692 affected contempt proceedings under the National Labor Relations Act.

Moreover, when the Civil Rights Act of 1957 (71 Stat. 638; 42 U. S. C. 1971 et seq.), was being considered by the Congress, it was made plain that Section 3692 applied only to those contempts which grew out of the disobedience of an order issued pursuant to the provisions of the Norris-LaGuardia Act. See statement of Congressman Celler (103 Cong. Rec. 8682-8687); and the statement of Congressman Keating (ibid., pp. 8688-8691). Congressman Celler's statement referred to above is particularly enlightening since he pointed out that he voted for the Norris-LaGuardia Act and he adopted as part of his remarks a brief entitled "Jury Trials in Contempt Proceedings With Special Reference to Labor Injunctions". That brief contains the following comments with respect to Section 3692:

> "An examination of the legislative history of section 3692 of title 18, United States Code indicates beyond any question of a doubt that there was no legislative intent to make a substantive change in the law.
>
> . . . . .
>
> In other words, section 3692 was based upon the original section 11 of the Norris-LaGuardia Act. In addition, the revision of title 18 specifically repealed that provision of the Norris-LaGuardia Act, as indicated by the reviser's notes.
>
> . . . . .

> Nowhere in there any mention made of any intent to change substantive law. The whole effect of such enactment was merely to transfer from title 29 into title 18 the provision providing for a jury trial in criminal contempt proceedings arising out of certain labor disputes."

Consequently, petitioner's demand for a jury trial to have substance would require the conclusion that Section 3692, which replaced Section 11 of the Norris-LaGuardia Act, worked a silent enlargement of the scope of Section 11 which is unwarranted from the legislative history referred to above. And, as this Court stated with respect to the Railway Labor Act, the National Labor Relations Act "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." *Virginia Ry. Co. v. System Federation No. 40,* 300 U. S. 515, 563, 57 S. Ct. 592; 81 L. ed. 789 (1937).

The cases which have been decided since Section 3692 was enacted also make it abundantly clear that that section applies only to actions instituted under the Norris-LaGuardia Act. In *Mitchell v. Barbee Lumber Co.,* 33 F. R. D. 544 (1964), the Court said:

> "My examination of this matter leads me to conclude that Section 3692 which was enacted into positive law in 1948, represents, in substance, a re-enactment of now repealed Section 111 of the Norris-LaGuardia Act." (29 U. S. C. A. Secs. 101-115)

In *In Re Piccinini,* 35 F. R. D. 548 (1964), the Court said:

> "Title 18 U. S. C. A. Sec. 3692 which gives an accused the right of a jury trial in labor disputes is based upon title 29 U. S. C. A. Sec. 111 of the Norris-LaGuardia Act."

In *Madden v. Grain Elevator Flour and Feed Millworkers,* 334 F. 2d 1014 (7th Cir. 1964), cert. denied 379 U. S. 967, 85 S. Ct. 661, 13 L. ed. 560 the Court said:

> "Section 3692 covers matters formerly found in Section 11 of the Norris-LaGuardia Act. It is inapplicable to a *proceeding* under the Labor-Management Relations Act." (Emphasis supplied.)

While the *Madden* case related to an injunction obtained by the National Labor Relations Board, it is significant that the Court's language refers to a "proceeding" under the Labor Management Relations Act and is not limited to an action instituted by the Board.

The latest case on this subject is *Brotherhood of Locomotive Firemen and Enginemen v. Bangor & Aroostook Railroad Company, et al.* (*supra*), in which the Court of Appeals for the District of Columbia said:

> "First, like all of the general federal contempt statutes, it is not clear from the language of this provision whether it applies solely to criminal contempt or is applicable also to civil contempt proceedings, as appellants here contend. It would seem, however, that the accepted view is that this limitation is not applicable to a civil contempt case. No case of which we are aware has held to the contrary, and we are not persuaded that the rule should be otherwise. The fact that, since the completed revision in 1952 of Titles 28 and 18, *all* of the general federal contempt statutes have been placed in Title 18, Crimes and Criminal Procedure, seems to indicate that these provisions are applicable only to cases of criminal contempt . . ." (id. at 19,024)
>
> ". . . Secondly, and decisively, we feel that Sec. 3692 applies only to those contempt proceedings arising from injunctions governed by the Norris-LaGuardia Act, which, as we discuss below, does not apply to prohibit or govern injunctive proceedings regarding acts determined to be violative of the Railway Labor Act . . ." (id. at 19,025)

The authorities cited above amply demonstrate that the petitioner was not entitled to a jury trial either under the Constitution or under Section 3692.

CONCLUSION.

The records in these two cases (Nos. 34 and 78) taken together clearly show that petitioners knew what was contemplated by the Order of the Court below which enforced the Arbitrator's Award. They knew that they were directed to comply with and abide by that Award. They knew that the Award provided that respondent's members were entitled to set back gangs without qualification. But in spite of this, they attempted to scuttle the Award by a persistent policy of non-compliance. In doing so, they not only violated the Award but they also violated the Order of the Court below. Such violations cannot be tolerated if court orders are to be respected and voluntary arbitration is to be promoted.

The promotion of healthy labor relations through the arbitration process, the kingpin of our national labor policy, requires strict adherence to Arbitration Awards and to Court orders enforcing these Awards. The petitioners' harassing tactics, their recalcitrance and their opposition to the Award and the Order enforcing the Award are well-documented. These admittedly unwarranted and illegal actions closed the entire Port of Philadelphia for several days and caused tremendous economic losses to the members of respondent association. Consequently, the petitioner Union was properly adjudged in civil contempt on clear and convincing evidence for the illegal mass actions of its members, and the Order of the Court below should be affirmed.

Respectfully submitted,

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